

Appl. No. : **10/786,339**
Filed : **February 25, 2004**

REMARKS

Applicants have herewith amended Claim 32 to recite the limitations regarding the elongated hollow tubes using the language similar to that of Claim 34, which has been canceled. Thus, Claim 32 now recites that the plurality of elongated hollow tubes comprises one or more first and one or more second elongated hollow tubes and with the first end of each fiber secured to a first elongated hollow tube and the second end secured to a second elongated hollow tube. Claims 39, 40 and 42 have been amended to recite a filter device. Claim 52 is canceled. Claims 55-60 have been amended to recite language regarding the characterization of the lower mass density zone and higher mass density zone.

The Examiner has objected to the specification as failing to provide antecedent basis for the pore diameter recited in Claim 63. It is submitted that the Examiner is incorrect and attention is directed to U.S. Patent No. 6,802,820, incorporated herein by reference. In column 5 of the '820 patent, the hollow fiber membranes used for ultrafiltration applications recite a high density zone (Zone 1) mean flow pore diameter of between 0.005 μm and 0.05 μm . Claim 14 of the '820 patent also claims those limitations.

Claims 39, 40, 42, 52 and 55-60 are objected for informalities. Those claims have been amended to obviate the objections.

Claims 32 and 36-63 are rejected under 35 U.S.C. § 103(a) as unpatentable over the Gorsuch et al. '109 application publication in view of Murase. Generic Claim 32 has been amended to recite limitations for the filter device which are not within the scope of the filter device described by the Gorsuch et al. publication. Specifically, the Gorsuch publication does not disclose or suggest a filter device having first and second elongated hollow tubes with the ends of the fibers secured to the first and second tubes. Thus, there is no basis for the rejection under 35 U.S.C. § 103(a). Since Claims 36-63 are dependent on generic Claim 32, the rejection of all of those claims as set forth in paragraphs 6-18 is improper.

Claims 32 and 36-63 are rejected under 35 U.S.C. § 103(a) as unpatentable over Gorsuch et al. U.S. Patent Application Publication No. 2003/0236482 in view of Murase. The rejection is respectfully traversed. For the same reasons described above, the Gorsuch et al. '482 publication does not teach or suggest a filter device as recited in generic Claim 32 and the dependent rejected claims. Accordingly, the rejection is improper.

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Claims 32 and 34-63 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent Application Publication No. 2004/0034317 in view of Murase. The rejection is respectfully traversed. The Gorsuch et al. '317 publication was published on February 19, 2004. The present application was filed February 25, 2004 and thus the '317 application is not a reference under 35 U.S.C. § 102(b). Moreover, it is submitted that the '317 Gorsuch et al. application is not available as a reference under 35 U.S.C. § 102(a). Applicants submit herewith a copy of the Declaration of the present application which was executed on February 18, 2004 by each of the co-inventors. The original Declaration is in the file wrapper of the present application and available to the Examiner. Thus, the Gorsuch et al. '317 publication is not available as a reference under 35 U.S.C. § 102(a). Accordingly, the Gorsuch et al. '317 publication is available as a reference only under 35 U.S.C. § 102(e). Applicants submit herewith a copy of the Abstract of Title for U.S. Patent No. 6,849,183 which was granted from the application corresponding to the published '317 Gorsuch et al. publication. The Examiner will note that the owner of the patent is Transvivo, Inc. Applicants also submit herewith a copy of the assignment of the present application, the assignment dated February 18, 2004 and recorded in the USPTO. The assignee is Transvivo, Inc., the same corporation that owns title to U.S. Patent No. 6,849,183 and its '317 publication. These documents show that the present application and the Gorsuch et al. '317 publication were, at the time the present invention was made, owned by, or subject to an obligation of assignment to, the same entity. Thus, under 35 U.S.C. § 103(c) the '317 Gorsuch et al. publication is disqualified as prior art. Accordingly, the rejection set forth in paragraphs 22-26 of the Office Action is improper.

Claims 32 and 36-63 are rejected under 35 U.S.C. § 103(a) as unpatentable over U.S. Patent No. 6,802,820 in view of Murase. The amendment to generic Claim 32 recites a filter device which is not disclosed by the '820 Gorsuch et al. patent, and thus the rejection is improper as are the reasons set forth in paragraphs 27-41 of the Office Action.

Claim 32 is rejected on the ground of nonstatutory obviousness-type double patenting as unpatentable over claims of U.S. Patent No. 6,659,973 in view of Murase. In view of the amendment to Claim 32 regarding the structure of the filter device which is not recited in any of the claims of the Gorsuch et al. '973 patent, the rejection is improper.

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Claim 32 is rejected on the ground of nonstatutory obviousness-type double patenting over Claim 12 of U.S. Patent No. 6,849,183 in view of Murase. The rejection is respectfully traversed. Claim 12 of the '183 patent does not recite any filter device having the structure recited in Claim 32. Accordingly, the rejection is improper.

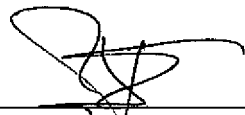
In view of the amendments to the claims herewith, it is submitted that all of the objections have been obviated as have the rejection of record in this application. It is submitted that the claims are in condition for allowance and notification thereof is respectfully requested.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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